IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 61 of 2002

with

Criminal Misc. Application No. 8819 of 2004

And

SPECIAL CRIMINAL APPLICATION No 119 of 2002

with

Criminal Misc. Application No. 8743 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JIVIBEN VASHRAMBHAI DODIYA WD/O DODIYA VASHRAMBHAI

Versus

STATE OF GUJARAT

Appearance:

MR KD VASAVADA for the Petitioners.

Mr. K.T.Dave , ADDL. PUBLIC PROSECUTOR

for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2-4
MR DC DAVE for Respondent No. 5
MR TUSHAR MEHTA for Respondent No. 6

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 23/12/2004

CAV JUDGEMENT

Both these petitions are filed to quash and set aside the FIR bearing Cr. No. I-765 of 2001. Hence, at the request of the learned counsel for the respective parties, they are heard together and are being disposed of by this common judgment.

2. Rule. Learned APP Mr. K.T.Dave waives service of notice of Rule on behalf of the respondent no.1 State. Learned counsel Mr. D.C.Dave waives service of notice of Rule on behalf of respondent no. 5. Learned counsel Mr. Tushar Mehta waives service of notice of Rule on behalf of respondent no. 6. The present petitions have been filed under Article 226 of the Constitution of India read with the provisions of section 482 of the Code of Criminal Procedure for quashing and setting aside the first information report bearing Crime Registration NO. I-765 of 2001 registered with Rajkot Taluka police station, Rajkot city on 9th December, 2001.

3. The learned counsel for the petitioners submitted that the first information report filed by Mavjibhai Laxmanbhai Dodiya against the applicants for the offences punishable under sections 465, 468, 471 and 120-B of the Indian Penal Code is absolutely false, concocted and baseless and therefore, it deserves to be quashed and set aside. In fact, the allegation referred to in the FIR that the applicants have fabricated and prepared false documents on the stamp paper of Rs. 2/- of the year 1965 and which was presented before the Court is absolutely de horse the facts. On the contrary, the said document on the stamp paper of Rs. 2/- of the year 1965 whereby distribution, of the land, was made is true and correct and genuine. Even the original of the same has been produced before the competent court and therefore, the FIR filed by the complainant which is at

Annexure "D" to the memo of the petition deserves to be quashed and set aside. According to the petitioners, the said complaint has been preferred malafide with malice and ill-will just to harass the petitioners by abusing police machineries. It is also contended by the learned counsel for the petitioners that in fact, the document in question was executed on 4th July, 1965 by the father of the petitioners (of Special Criminal Application no. 61 of 2002 and the complainant and the property was bifurcated between them and the same was reduced in writing, but as it was not necessary to be registered, the said document was not registered. Nonetheless, it is binding to the complainant as well as to the petitioners. It is also contended by the learned counsel for the petitioners that as the said document is 30 years old, as per the provisions of Indian Evidence Act, the same must be presumed to be true and correct and therefore also, the FIR bearing Cr. No. I-765 of 2001 dated 9th December, 2001 deserves to be quashed and set aside. It is also contended by the learned counsel for the petitioners that as these documents have been produced before the Collector in Revenue Appeal against the order passed by the Assistant Collector, in fact, proceedings under sections 195 and 340 of the Code of Criminal Procedure ought to be followed and straightaway FIR cannot be filed by the complainant. Hence also, the present complaint deserves to be quashed and set aside. In fact, allegations have been levelled against the complainant and his mother by the petitioners and these allegations levelled by the petitioners should be inquired into.

4. The learned Additional Public Prosecutor Mr. Dave appearing for the State submitted that the document in question of the year 1965 on stamp paper of Rs.2/- has been produced by the petitioners-original accused in a Revenue Appeal before Collector. As per the allegations of the complainant, the said document is false and fabricated. The whole dispute has arisen because of the land bearing survey nos.12 and 15. The total land comes to 53 acres and 15 gunthas, out of which 20 acres of land was sold on 12th March, 1970 to Virchandbhai Devshibhai Karia. An entry to this effect has been incorporated in the revenue records. This fact has been accepted even by the petitioners in their Land Revenue Appeal No. 258 of 1990-2000. Thus, the remaining land i.e. 33 acres and 15 gunthas was owned by the parties. Thereafter, on 14th March, 1972 the property was bifurcated amongst family members of Laxmanbhai and Vashrambhai. The said settlement/bifurcation of the property has been reduced in writing. A revenue entry has also been carried out on

21st July, 1972. By both the aforesaid incidents, that is, dated 12th March, 1970 and 21st July, 1972, no objection or contention has ever been raised by the petitioners on the basis of the so called document dated 4th July,1965 which is on a stamp paper of Rs.2/- and which is unregistered. For the first time, this document of 1965 was produced before the Collector, Rajkot in the land revenue appeal filed by the petitioners. In between, a civil suit has also been filed for the very same dispute. It is also stated by the learned APP that the Collector, Rajkot district has also written a letter dated 9th January, 2002 to the Secretary, Revenu Department (Appeals) to the effect that the document of bifurcation of properties of survey nos. 12 and 15 dated 4th July, 1965 presented by Ranjit Vashrambhai is a bogus one and therefore, a the order passed by the Collector, Rajkot dated 31st August, 2001 may be quashed and set aside. These letters have been produced before this Court alongwith affidavit-in-reply filed by the Investigating Officer in Special Criminal Application No. 119 of 2002. The investigation so far carried out, reveals that there is involvement of the petitioners and therefore, the complaint filed by the complainant may not be quashed and set aside. It is also submitted by the learned APP that as per principles enunciated by the Apex Court in several decisions including in the case of M. Narayandas vs. State of Karnataka and others reported in 2003(11) SCC, 251, the first information given by the complainant constitutes a cognizable offence. If the allegations made in the first information report are taken at its face value and accepted in their entirety, it constitutes an offence under sections 465, 467, 468, 471 and 120-B of the Indian Penal Code. The whole document of 1965 was a got up, fake and fabricated document with a view to grab the property of the complainant. Though the name entered into the revenue record, was dated 21st July, 1972 and though possession of the said land, was with the complainant since more than 20 years and when no objection, no dispute, no contention has ever been raised, during these long period of 20 years by the petitioners, but for the first time in an appeal in the revenue side before the Collector, Rajkot, this document (dated 4.7.1965) was presented for quashing and setting aside the entry which was already sanctioned on 21st July,1972. This appeal bears no. 258 of 1999-2000. Thus, after a period of approximately two decades, all the accused referred to in the FIR have entered into a conspiracy and prepared a false and fabricated document dated 4th July 1965 and therefore, FIR has been filed. The said document has been prepared outside the Court and therefore, FIR filed by the

complainant is not barred under the provisions of section 195-340 of Criminal Procedure Code and therefore, the present petitions which are for quashing of the FIR deserve to be dismissed.

5. I have also heard the learned Senior counsel Mr. Nirupam Nanavati with learned counsel Mr. Tushar Mehta for the respondent no. 5-original complainant who has mainly submitted that all the accused referred to in the FIR bearing Cr. No. I-765 of 2001 registered with Rajkot Taluka police station dated 9th December, 2001 have committed offences as alleged by the complainant by preparing a false and fabricated document dated 4th July, 1965. As the petitioners (original accused) could not get any favourable order from the Court for getting ownership of the land bearing survey no. 12, they prepared a fake document on stamp paper of Rs.2/- on 4th July, 1965 and presented before the Collector in an appeal under revenue proceedings in the year 1999-2000 for quashing and setting aside entry dated 21st July, 1972. The complainant was enjoying the possession of the property in dispute since last many years. Never, ever before, any objection was raised by the petitioners, claiming their ownership and for the first time in the appeal proceedings before the Collector Rajkot district in the year 1999-2000, with a view to get benefits of possession and ownership of the land, the document dated 4th July, 1965 was fabricated with the help of advocate Paresh Patel of Rajkot whose name is also referred in the FIR. There are clear, unequivocal, unambiguous and definite allegations against the petitioners which constitute the offences as alleged in the FIR. Even the material found out by the police during the investigation carried so far is against the petitioners. Therefore, the present FIR may be allowed to be investigated by the police and the petitions may be dismissed.

6. I have heard the learned counsel for the respective parties. I have also perused the FIR and the affidavit filed in Special Criminal Application no. 61 of 2002 as well as in Special Criminal Application no. 119 of 2002 preferred by advocate Paresh G Patel for quashing and setting aside the FIR bearing Cr No. I-765 of 2001 dated 9th December, 2001. Looking to the FIR, it appears that there are clear and unambiguous allegations against the petitioners of both the aforesaid petitions which constitute the offences as alleged in the FIR. The document presented by the petitioners dated 4th July, 1965 at much belated stage for the first time and that too, in the appeal proceedings for quashing and setting

aside the revenue entry dated 21st July, 1972. As per the allegations of the complainant, civil suits are also pending between the parties and as the petitioners, (legal heirs of Vashrambhai) could not get favourable order, the aforesaid document of the year 1965 on stamp paper of Rs. 2/- which is an unregistered deed of bifurcation of property was presented by the accused before Collector, Rajkot district in appeal proceedings under Bombay Land Revenue Code and therefore, the allegations have been levelled by the complainant that since 21st July, 1972, till filing of the appeal proceedings in the year 1999-2000, there was a peaceful possession and ownership of the complainant (legal heirs of Laxmanbhai) at no point of time since 1972 onwards, any dispute, contention or allegations have been made by the accused on the basis of the so called document of 1965 and as the accused could not get any favourable order in civil proceedings, they took shelter, of preparing false, fake and fabricated document, with the help of one lawyer, namely Paresh G Patel (who is the petitioner in Special Criminal Application no. 119 of 2002), with a view to get benefit of ownership and possession of the land. The said document is on stamp paper of Rs. 2/- and is an unregistered document which has been falsely fabricated and concocted on 4th July, 1965 by the accused. This constitutes an offence punishable under sections 465, 467, 468, 471 and 120-B of Indian Penal Code. The nature of allegations constitutes the offence as alleged. Even looking to the affidavit-in-reply filed by the Investigating Officer, that is, S.J.Jadeja, Police Sub Inspector, Anti Land Grabbing Squad, working the office of the Commissioner of Police, has narrated that material so far collected during the course of investigation goes against the accused, that is, the petitioners. List of offences has been pointed out against Paresh G Patel (petitioner of Special Criminal Application No. 119 of 2002) which are as under:

Sr. No.	Police station and Cr. No.	Sections	Date of Registration	Remarks
01	Rajkot Taluka police station 65/2001	465, 467, 648, 471 of IPC	23.1.2001	Chargesheet No. 40/02 dated 30.1.02
		One person is absconding.		
02.	Pradyumannagar Police station Cr. No.118/01	420, 467, 468,471, 114 of IPC	23.2.2001	Charge-sheet No. 25/2002 13.1.2002

03.	Rajkot Taluka police station Cr.No. 765/2001	465,467, 468,471 of IPC	9.12.2001	Pending investigation

Four persons are absconding.

In the present case, upon plain reading of the F.I.R., the acts of the accused narrated, constitute the offences as alleged. Defences of the accused are not to be appreciated at this stage. F.I.R. cannot be quashed on the basis of annexures of the petition which may ever constitute a very good defence. The court cannot inquire about reliability or genuineness or otherwise of the allegations made in the F.I.R. Therefore, the FIR filed by the complainant deserves not to be quashed. As per the principles enunciated by the Hon'ble Supreme Court in several cases including that in the case of M. Narayandas vs. State of Karnataka and others reported in (2003) 11 SCC, 251. Paras 5 and 6 of the said judgment read as under:

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"5. Before dealing with the High Court, which has been impugned, it is first necessary to set out the well settled law. The law has been very succinctly set out in the case of State of Haryana vs. Bhajan Lal. In this case the High Court had quashed an FIR. While setting aside the High Court judgment, this Court held as follows:

"31. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the police officer concerned cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has a reason to suspect the commission of an offence which he is empowered under section 156 of the Code to investigate, subject to the proviso to section 157. (As we have proposed to make a detailed discussion about the power of police officer in the field of investigation of a cognizable offence within the ambit of sections 156 and 157 of the Code in the ensuing part of this judgment, we do not propose to deal with those sections in extenso in

the present context.) In case, an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of section 154 of the Code.

32. Be it noted that in section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression "information" without qualifying the same as in section 41(1)(a) or (g) of the Code wherein the expression "reasonable complaint" and "credible information" are used. Evidently, the non-qualification of the word "information" insection154(1) unlike in section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, "reasonableness" or "credibility" of the said information is not a condition precedent for registration of a case. A comparison of the present section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that "every complaint or information" preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that "every complaint" preferred to an officer in charge of a police station shall be reduced in writing. The word "complaint" which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word "information" was used in the Codes of 1882 and 1898 which word is now used in sections 154, 155, 157 and 190(c) of the present Code of 1973 (Act 2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be an information and that information must disclose a cognizable offence.

33. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. (emphasis supplied) (SCC pp.354-55 paras 31-33).

40. The core of the above sections, namely, 156, 157 and 159 of the Code is that if a police officer has reason to suspect the commission of a cognizable offence, he must either proceed with the investigation or cause an investigation to be proceeded with by his subordinate; that in a case where the police officer sees no sufficient ground for investigation, he can dispense with the investigation altogether, that the field of investigation of any cognizable offence is exclusively within the domain of the investigating agencies over which the courts cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions relating to investigation and that it is only in a case wherein a police officer decides not to investigate an offence, the Magistrate concerned can intervene and either direct an investigation or in the alternative, if he thinks fit, he himself can, at once proceed or depute any Magistrate subordinate to him to proceed to hold a preliminary inquiry into or otherwise to dispose of the case in the manner provided in the Code. (emphasis supplied) (SCC pp.358-359 para 40).

10.2 In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formula and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first

information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under section 156(1) of the Code except under an order of a Magistrate within the purview of section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplate under section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to

its whim or caprice." (SCC pp 378-79 paras 102-03).

It must also be mentioned that it is settled law that the power to quash must be exercised very sparingly and with circumspection. It must be exercised in the rarest of rare cases. It is also settled law that the court would not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR. The court also cannot inquire whether the allegations in the complaint are likely to be established or not.

6. Keeping the above-mentioned principles in mind, let us now see what the High Court has done in the impugned judgment, the High Court proceeds to consider the case of the appellant in the complaint and the case made out by the respondents. The High Court examines the documents, compares the signatures thereon and then proceeds to arrive at a conclusion that the documents are not false or fabricated. The High Court takes into consideration certain photographs and other material produced by the respondents and concludes that the complaint was vexatious, frivolous and false. On this basis the High Court proceeds to quash the complaint and impose cost of Rs.10,000/- on the appellant. The High Court does not conclude, as it could not have, that the allegations made in the complaint, if taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused. The High Court does not conclude, as it could not have, that the allegations in the complaint do not disclose a cognizable offence justifying an investigation by the police officer. The conclusion of the High Court that the complaint was false, vexatious and frivolous is based on the materia produced by the respondents. One fails to understand how without evidence the High Court could have relied on this material. It is clear that the impugned order is totally unsustainable. To the credit of the counsel appearing for the respondents, it must be stated that the impugned order was not sought to be supported for the reasons given by the High Court in quashing the complaint. It was fairly admitted that the reasons given by the High Court, in quashing the complaint, were unsustainable."

In the aforesaid case also, three documents were presented by the accused and the complainant was claiming that he never had executed the said document. Hence, on his complaint, FIR was lodged against the said accused under section 468, 470, 471 and

120-B of the IPC. A petition was preferred to quash and set aside the FIR. Reversing the judgment, the appeal preferred by the complainant was allowed and the FIR was not quashed. Similarly, the contention of the petitioners that section 195 of Criminal Procedure Code is applied and procedure prescribed in section 340 of Criminal Procedure Code is not followed therefore, F.I.R. deserves to be quashed. This contention is not accepted by this Court as, section 195 and section 340 of Criminal Procedure Code do not control or circumscribe the power of police to investigate under Criminal Procedure Code.

As per Apex Court judgment in the case of M. Narayandas vs. State of Karnataka and others reported in (2003) 11 SCC, 251 para-8 of which reads as under:

"8. We are unable to accept the submissions made on behalf of the respondents. Firstly, it is to be seen that the High Court does not quash the complaint on the ground that section 195 applied and that the procedure under Chapter XXVI had not been followed. Thus such a ground could not be used to sustain the impugned judgment. Even otherwise, there is no substance in the submission. The question whether sections 195 and 340 of the Criminal Procedure Code affect the power of the police to investigate into a cognizable offence has already been considered by this Court in the case of State of Punjab vs. Raj Singh. In this case, it has been held as follows: (SCC pp 391-92 para 2).

"2. We are unable to sustain the impugned order of the High Court quashing the FIR lodged against the respondents alleging commission of offences under sections 419, 420, 467 and 468 IPC by them in course of the proceeding of a civil suit, on the ground that section 195(1)(b)(ii) Cr.PC prohibited entertainment of and investigation into the same by the police. From a plain reading of section 195 Cr.PC it is manifest that it comes into operation at the stage when the court intends to take cognizance of an offence under section190(1) Cr.PC; and it has nothing to do with the statutory power of the police to investigate into an FIR which discloses a cognizable offence, in accordance with Chapter XII of the Code even if the offence is alleged to have been committed in, or in relation to, any proceeding in court. In other words, the statutory power of the police to investigate under the Code is not in any way controlled or

> circumscribed by section 195 Cr.PC. It is of course true that upon the charge-sheet (challan), if any, filed on completion of the investigation into such an offence the court would not be competent to take cognizance thereof in view of the embargo of section 195(1)(b) Cr.PC, but nothing therein deters the court from filing a complaint for the offence on the basis of the FIR (filed by the aggrieved private party) and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down in section 340 Cr.PC. The judgment of this Court in Gopalakrishna Menon vs. D Raja Reddy on which the High Court relied, has no manner of application to the facts of the instant case for there cognizance was taken on a private complaint even though the offence of forgery was committed in respect of a money receipt produced in the civil court and hence it was held that the court could not take cognizance on such a complaint in view of section 195 Cr.PC."

Not only are we bound by this judgment but we are also in complete agreement with the same. Sections 195 and 340 do not control or circumscribe the power of the police to investigate under the Criminal Procedure Code. Once investigation is completed then the embargo in section 195 would come into play and the court would not be competent to take cognizance. However, that court could then file a complaint for the offence on the basis of the FIR and the material collected during investigation provided the procedure laid down in section 340 of the Criminal Procedure Code is followed. Thus no right of the respondents, much less the right to file an appeal under section 341, is affected."

7. In view of the aforesaid factual and legal position and facts and circumstances and for the reasons stated hereinabove, there these petitions. Both the petitions are, therefore, dismissed. Accordingly, the petitions are dismissed. Rule discharged in both the petitions. Interim relief, if any, stands vacated. Both the Criminal Miscellaneous Applications are also disposed of in view of the aforesaid order. Notice discharged in each application.

(D.N.Patel,J)

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